

Notice of Allowability

Application No.

09/998,039

Examiner

Fenn C Mathew

Applicant(s)

MITCHELL ET AL.

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/27/04.
2. ☒ The allowed claim(s) is/are 1-38.
3. ☒ The drawings filed on 30 November 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see the Appeal Brief, filed 10/27/2004, with respect to claims 1-38 have been fully considered and are persuasive. The rejection of claims 1-38 has been withdrawn. Applicant has established the criticality of the range of angles formed by the axes of rotation and the lack of *prima facie* showing of obviousness supporting the proposed combination between the prior art device and Habing (U.S. 5,897,467) (pg. 7-9 of Appeal Brief). On the cited pages of the Appeal Brief, Applicant has cited portions of Habing which teach away from the proposed combination thus requiring withdrawal of the rejection. Applicant has also reiterated in the Declaration by Gregory M. Webb filed 05/05/2003 that the prior art cited by the Applicant has axes of rotation forming an approximately 90 degree angle with one another thereby causing undue stress to a user and providing the need for the claimed range.

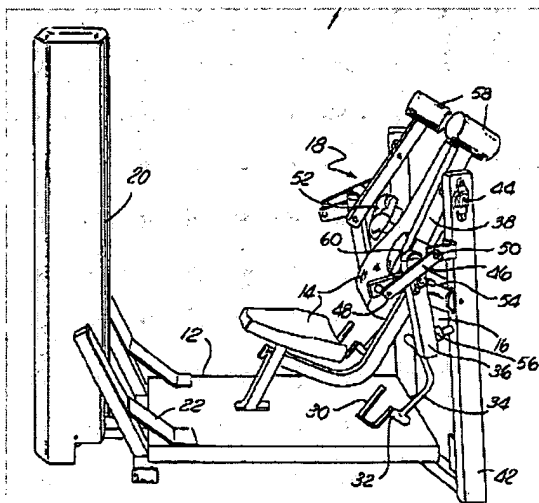
Allowable Subject Matter

2. Claims 1-38 are allowed. The following is an examiner's statement of reasons for allowance:

3. Applicant's prior art shows an exercise machine for exercising the biceps comprising a frame configured to rest on an underlying surface, a seat mounted to the frame a pair of support pads mounted to the frame forwardly of and above the seat, with each of the support pads being positioned to engage one of the upper arms and the elbows of the seated user, a pair of movement arms pivotally connected with the frame,

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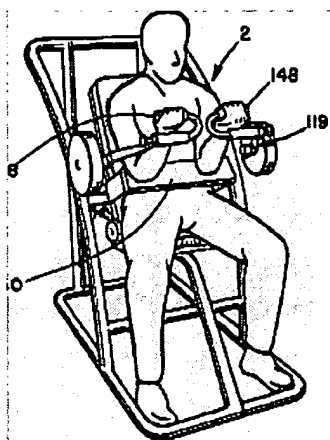
and movable about respective generally horizontal axes of rotation that extend through the seated user's elbows and remain stationary (thereby inherently requiring the support pads to be mounted in a stationary manner), each of the pair of movement arm units being configured to engage at least one of the forearms and the hands of the user, each of the pair of movement arms being movable between an extended position in which the seated user's arms are straight, and a curled position, in which the user's arms are bent, and a resistance system connected with the movement arm units that provides resistance to rotation of the movement of the movement arm units as they move from the extended position to the curled position. The device as cited in the declaration filed 05/05/2003, the invention does not have the axes of rotation forming an angle between 115 and 155 degrees, and has cited the criticality of range.



Habing (U.S. 5,897,467) teaches an

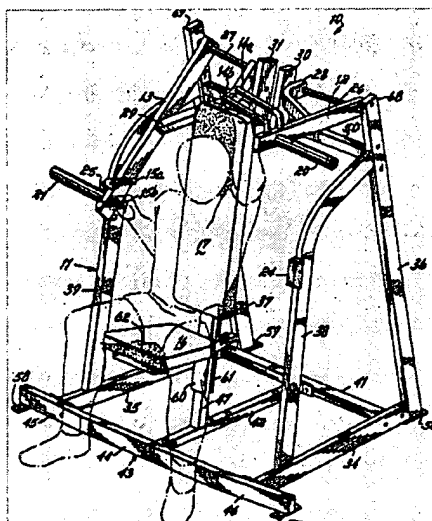
analogous device including movement arms at an angle approximately within the claimed range. However, Habing teaches away (col. 1, lines 20-35) from the combination with prior art exercise machines, as the axes of rotation do not remain stationary during the entire exercise movement.

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Carlson (U.S. 4,730,829) teaches a biceps exercise

machine with structure, wherein the axes of rotation through the user's elbows remain the same during exercise movement, however, Carlson fails to teach or make obvious the angles of rotation through the elbows forming an angle in the range of 115 and 155 degrees.

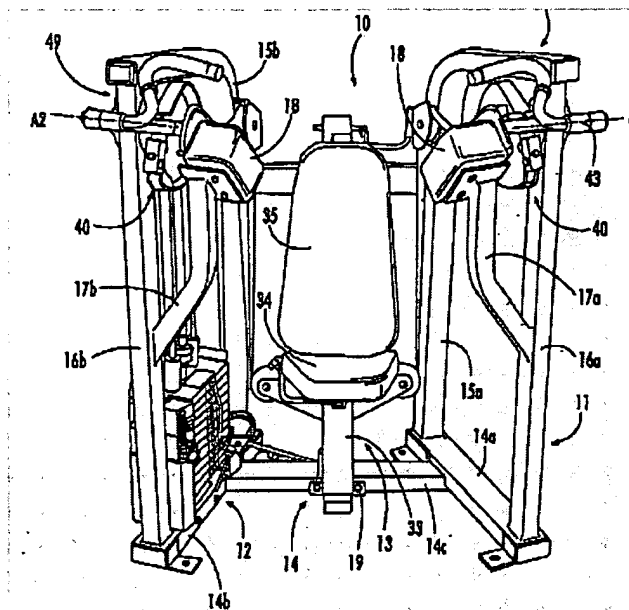


Jones (U.S. 5,044,632) teaches an exercise

device with movement arms at an angle, but fails to teach structure that would allow a user's elbows to remain stationary through the entire movement.

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The prior art of record fails to teach or make obvious the claimed invention as



seen including a frame, a pair of support pads (18) on which a user rests their elbows, a pair of pivotal movement arm units grasped by the user's hands, with the movement arms being movable between an extended position wherein the user's arms would be straight, and a curled position wherein the user's arms would be bent, with the axes of rotation extending through the user's arms and the movement arms remaining stationary during use, and further wherein the angle formed by the aforementioned axes of rotation are between 115 and 155 degrees.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

fcm

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January 10, 2005

JR

**JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700**

1/10/05